

1 COOLEY LLP
Heidi Keefe (178960)
2 (hkeefe@cooley.com)
Lowell Mead (223989)
3 (lmead@cooley.com)
Priya B. Viswanath (238089)
4 (pviswanath@cooley.com)
3175 Hanover Street
5 Palo Alto, California 94304
Telephone: (650) 843-5000
6 Facsimile: (650) 849-7400

7 COOLEY LLP
Phillip Morton (*Pro Hac Vice*)
8 (pmorton@cooley.com)
1299 Pennsylvania Avenue
9 NW, Suite 700
Washington, DC 20004-2400
10 Telephone: (202) 842-7800
Facsimile: (202) 842-7899

11 *Attorneys for Defendant*
12 Apple Inc.

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16
17 COREPHOTONICS, LTD.

18 Plaintiff,

19 vs.

20 APPLE INC.

21 Defendant.
22
23
24
25
26
27
28

Case No. 3:17-cv-06457-JD (lead case)
Case No. 5:18-cv-02555-JD

**DEFENDANT'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED**

Pursuant to Civil L.R. 7-11 and 79-5(f), Defendant Apple Inc. (“Apple”) respectfully files this motion to consider whether another party’s material should be sealed. Specifically, Apple seeks to file under seal certain materials and portions of materials that were designated as confidential by Plaintiff Corephotonics, Ltd. (“Corephotonics”) under the Protective Order in this case (Dkt. 77).

I. LEGAL STANDARD

The Ninth Circuit treats dispositive versus non-dispositive motions (and documents attached thereto) differently for purposes of sealing. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006); *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098 (9th Cir. 2016). Whereas dispositive motions are subject to the “compelling reason” standard, non-dispositive motions are subject to the “good cause” standard. *Kamakana*, 447 F.3d at 1179-80 (detailing distinction between “compelling reason” and “good cause” standards as applied to dispositive and non-dispositive motions).

II. ARGUMENT

The following portions of Apple’s opening brief and certain exhibits filed in support of its Motion to Dismiss For Lack of Standing, filed concurrently herewith, constitute, contain, and/or reflect materials that Corephotonics designated as “Confidential — Attorney’s Eyes Only” under the Protective Order in this action (Dkt. 77):

Materials Sought to be Sealed	Sealing Request
Opening brief in support of Apple’s Motion to Dismiss for Lack of Standing: <ul style="list-style-type: none"> page 1, lines 19-20, 20-22, 23-24, and 24-26 page 2, lines 15-16, 17-18, 20-21, 21-22, 23-27 page 3, lines 1-2, 3-4, 5-6, 7-9, 9-10, 10-11, 13, 14-15, 18-20, 21-22, 22-23, 25-26, 26-27 page 4, lines 1, 3-4, 4-6, 6-8, 8-10, 10-11, 12-13, 14-15, 16-17, 20-22 page 6, lines 18-20 page 7, lines 1-2, 8-9, 16-17, 24-25 page 8, lines 6-8, 16-17, 20-22, 28 page 9, line 2 	Narrowly tailored portions of Reply reflecting materials designated “Confidential — Attorney’s Eyes Only” by Corephotonics

<ul style="list-style-type: none"> • page 10, lines 22-23, 25 • page 11, lines 19-20, 20-21 	
Exhibits 1, 2, and 3	Documents produced by this action designated “Confidential – Attorney’s Eyes Only” by Corephonics
Exhibits 4 and 5	Excerpts of deposition transcripts designated “Confidential – Attorney’s Eyes Only” by Corephonics
Exhibit 6	Excerpt of interrogatory response designated “Confidential – Attorney’s Eyes Only” by Corephonics

Apple does not take a position on whether or not the materials identified above and designated as confidential by Corephonics should properly be withheld, but has filed this motion in compliance with the Protective Order and Civil L.R. 79-5(f). The relief requested in this motion is necessary and is narrowly tailored to protect confidential information.

III. COURT’S STANDING ORDER

Apple confirms that it has reviewed and complied with the Court’s Standing Order Governing Administrative Motions to File Materials Under Seal and Civil Local Rule 79-5. Apple files this Motion cognizant of Para. 31 of the Standing Order and is prepared to file a more fulsome and revised motion to seal after the completion of briefing if warranted.

IV. CONCLUSION

For the reasons set forth above, Apple respectfully requests that the Court grant an Order allowing Apple to file under seal the materials identified the table above.

1 Dated: December 19, 2023

Respectfully submitted,

2 COOLEY LLP

3 By: /s/ Heidi L. Keefe
4 Heidi L. Keefe (178960)
5 (hkeefe@cooley.com)
6 Lowell Mead (223989)
7 (lmead@cooley.com)
8 Priya B. Viswanath (238089)
9 (pviswanath@cooley.com)
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
Telephone: (650) 843-5000
Facsimile: (650) 849-7400

10 COOLEY LLP
11 Phillip Morton (*Pro Hac Vice*)
12 (pmorton@cooley.com)
13 1299 Pennsylvania Avenue
14 NW, Suite 700
15 Washington, DC 20004-2400
16 Telephone: (202) 842-7800
17 Facsimile: (202) 842-7899

18 *Attorneys for Defendant*
19 *Apple, Inc.*

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of California. I am employed in Santa Clara County, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94306. On the date set forth below I served the foregoing documents in the manner described below:



(BY ELECTRONIC MAIL) I am personally and readily familiar with the business practice of Cooley LLP for the preparation and processing of documents in portable document format (PDF) for e-mailing, and I caused said documents to be prepared in PDF and then served by electronic mail to the parties listed below.

on the following part(ies) in this action:

Marc Fenster
Benjamin Wang
Brian D. Ledahl
Neil A. Rubin
James S. Tsuei
RUSS AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991
mfenster@raklaw.com
bwang@raklaw.com
bledahl@raklaw.com
nrubin@raklaw.com
jtsuei@raklaw.com

Attorneys for Plaintiff Corephotronics, Ltd.

Executed on December 19, 2023, at Palo Alto, California.

/s/ Tracy Gibbs

Tracy Gibbs